

Hearing Date: December 20, 2017 at 8:30 a.m. (ET) / 9:30 a.m. (AST)

Objection Deadline: December 5, 2017 at 3:00 p.m. (ET) / 4:00 p.m. (AST)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO, : PROMESA
as representative of : Title III
THE COMMONWEALTH OF PUERTO RICO *et al.*, : Case No. 17-BK-3283 (LTS)
Debtors.¹ : (Jointly Administered)

To the Honorable Judge:

The Official Committee of Unsecured Creditors of all title III Debtors (other than COFINA) (the “Committee”) hereby submits this limited joinder (the “Limited Joinder”) to *Ambac Assurance Corporation’s Motion for Entry of Order Authorizing Discovery Under Bankruptcy Rule 2004*² (“Ambac Rule 2004 Motion”) and respectfully represents as follows:

1. Ambac Assurance Corporation (“Ambac”) filed the Ambac Rule 2004 Motion, seeking, among other things, information relating to the impact on sales-and-use-tax (“SUT”)

¹ The Debtors in these title III cases, along with each Debtor’s respective title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283 (LTS)) (Last Four Digits of Federal Tax ID: 3481), (ii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK-3566 (LTS)) (Last Four Digits of Federal Tax ID: 9686), (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567 (LTS)) (Last Four Digits of Federal Tax ID: 3808), (iv) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK-3284 (LTS)) (Last Four Digits of Federal Tax ID: 8474); and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747).

² Unless otherwise indicated, references to docket numbers shall be to the docket of the Commonwealth Title III Case.

generation and collection due to the (i) impact of Hurricane Maria and (ii) impact of Executive Order 2017-068, which suspended SUT collection on small and medium-sized enterprises. Ambac Rule 2004 Motion ¶¶ 2, 4.

2. The information Ambac is seeking is important to all creditors; therefore, the Committee joins in the Ambac Rule 2004 Motion, but solely to the extent that the Ambac Rule 2004 Motion requests authorization to seek discovery from the Commonwealth, AAFAF, and COFINA (the “Relevant Parties”) (whether in the form of document productions or depositions) and to serve subpoenas on third parties.³

3. If the Ambac Rule 2004 Motion is granted, the Committee will work with Ambac to implement coordinated discovery procedures to ensure that information is disseminated in an efficient, cost-effective manner, without needless duplication.

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³ As the court is aware, the Committee is the “Commonwealth Agent” with respect to the “Commonwealth-COFINA Dispute,” as defined in the *Stipulation and Order Approving Procedure to Resolve Commonwealth-COFINA Dispute* [Docket No. 996] (the “Commonwealth-COFINA Stipulation”), and initiated an adversary proceeding against the COFINA Agent (as defined in the Commonwealth-COFINA Stipulation). *Official Committee of Unsecured Creditors v. Whyte*, Adv. Proc. No. 17-257. The Committee files this Limited Joinder after evaluating the “pending proceeding doctrine,” which, in the Committee’s opinion, does not bar this Limited Joinder, as the discovery sought does not squarely address any issue in the Commonwealth-COFINA Dispute, which will determine “[w]hether, after considering all procedural and substantive defenses and counterclaims, including constitutional issues, [the SUT] purportedly pledged by COFINA to secure debt . . . are property of the Commonwealth or COFINA under applicable law.” Commonwealth-COFINA Stipulation ¶ 4. The generation and collection of SUT in a post-Hurricane Maria environment does not relate to the ownership of same.

WHEREFORE, the Committee respectfully requests that the court enter an order granting the Ambac Rule 2004 Motion and authorizing the Committee to: (i) conduct its own depositions of designees of the Relevant Parties; (ii) serve targeted requests for production on the Relevant Parties; (iii) serve subpoenas on third parties; and (iv) defend any challenges to its requests asserted by the Relevant Parties, and other third parties, including, but not limited to scheduling meet & confers and responding to motions to quash.

Dated: December 2, 2017
San Juan, Puerto Rico

/s/ G. Alexander Bongartz
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